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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MARLON RENE BRADLEY,

Defendant and Appellant.

E070102

(Super.Ct.No. RIF1701237)

OPINION

APPEAL from the Superior Court of Riverside County. Thomas D. Glasser, Judge. (Retired Judge of the San Bernardino Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Ronda G. Norris, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, and Eric A. Swenson and Yvette M. Martinez, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant and appellant, Marlon Rene Bradley, of criminal threats (count 1; Pen. Code, § 422),¹ false imprisonment (count 2; § 236), and unlawful possession of ammunition (count 3; § 30305, subd. (a)). Defendant thereafter admitted having suffered four prior serious felony convictions (§ 667, subd. (a)) and four prior strike convictions (§§ 667, subds. (c), (e)(2)(A), 1170.12, subd. (c)(2)).² The court sentenced defendant to 25 years to life followed by a determinate term of 20 years.

Defendant contends the court abused its discretion in denying his motion to strike his prior strike conviction enhancements. We affirm.

I. FACTUAL AND PROCEDURAL HISTORY

On April 8, 2017, defendant, the victim's friend for many years, picked the victim up at McDonald's because he was concerned she had stolen items belonging to his mother. The victim had been using heroin that morning. She testified she did not remember much from that afternoon. The victim did not remember calling or speaking with police.

The People played recordings for the jury of both the victim's 911 calls. In the first call, the victim stated: "I'm about to be killed. I'm about to be killed." She said: "This man is gonna kill me. I'm in the bathroom. He told me not to leave. He's coming

¹ All further statutory references are to the Penal Code.

² Both the People and the court failed to recognize that the court neglected to take defendant's admission to an additional alleged prior strike conviction, prior strike number 7.

back right now” In the second call, the victim said: “He’s gonna kill me.” She said: “Please hurry. He’s gonna come and choke me.”

An officer responded to the call; defendant answered the door. The officer conducted a safety sweep of the residence. He heard what sounded like a woman hyperventilating and crying behind a closed door. The officer opened the door to a restroom. He found the victim, who appeared “[v]ery distraught. She was barely able to speak to me, crying.” “[S]he was hysterical. She could barely breathe.”

The People played the officer’s audio recording of his conversation with the victim. She said: “So [defendant] told me . . . he was going to make [an] example of me. And he was gonna kill me.” “He said, ‘You don’t believe me when I’m telling you that I’m gonna slit your mother fuckin’ throat.’” “He told me to go in the bathroom and he told me to take off my clothes. And he pushed me right here on my head. And he—and then the doorbell rang when he was going through my phone and he said, ‘Depending on who it is you called, I’m gonna kill them next.’” The victim said she called the police. After she called the police, defendant smacked her in the mouth three times. Defendant then “just told me he was gonna kill me.”

The victim reported defendant “said, ‘I’m gonna slash your fuckin’ throat.’ He said, ‘You don’t think I’m capable of doin’ it. You don’t think I’m for real. It’s nothing for me to kill. It’s nothing for me to kill anybody.’” She told the officer she was scared.

The officer testified the victim said defendant handed her a box of bullets and said he had two new guns. The officer found and took a photograph of a box of ammunition which was on the counter in the bathroom. The parties stipulated that ““defendant has previously been prohibited from owning, possessing, or having under his custody and control ammunition.”” Defendant told the officer “he was going to kick [the victim’s] ass”

The People charged defendant by information with criminal threats (count 1; § 422), false imprisonment (count 2; § 236), and unlawful possession of ammunition (count 3; § 30305, subd. (a)). The People additionally alleged defendant had suffered five prior serious felony convictions and nine prior strike convictions. After the jury rendered its verdicts, the People moved to amend the information by interlineation, moving to dismiss one prior serious felony and four prior strike convictions, which the court granted. Defendant then admitted suffering four prior serious felony convictions and four prior strike convictions.

Defense counsel thereafter filed a motion to strike defendant’s prior strike conviction enhancements based on the age of defendant’s prior convictions, defendant’s own age, and the fact that he had remained relatively crime free since his release from prison. At the hearing on the motion, defense counsel reiterated the points raised in his motion. The People responded that one of defendant’s prior strike convictions was a so-called “super strike,” attempted murder. The court denied the motion.

II. DISCUSSION

Defendant contends the court abused its discretion in denying defendant's motion to strike his prior strike conviction enhancements. We disagree.

At the hearing on defendant's motion, the court outlined the law governing its discretion to strike prior strike conviction enhancements. The court noted defendant's criminal record went all the way back to 1974 and that his latest felony conviction occurred in 1989: "However, he was paroled once for those offenses in October of 2007. He was violated, returned to prison, paroled on April 16, 2009. [¶] So the span of time between the currently convicted offenses here before us and the prior conviction of March 23, 1989, is not that lengthy a period of time. Rather, I think what needs to be looked at is [the] date of parole after the violation and recommitment to parole. So it was April 16, 2009, which is about eight years maybe between that parole grant and the currently convicted offenses." The court further observed: "[T]here are many serious, violent crimes committed by [defendant], many parole dates, many violations of parole. I think violations of probation even." The court found defendant did not fall outside the three strikes sentencing scheme and denied the motion.

"[A] court's failure to dismiss or strike a prior conviction allegation is subject to review under the deferential abuse of discretion standard." (*People v. Carmony* (2004) 33 Cal.4th 367, 374.) Under this standard, the defendant bears the burden of establishing an abuse of discretion. In the absence of such a showing, the trial court is presumed to have acted correctly. The appellate court may not substitute its judgment for that of the

trial court when determining whether the trial court's decision to strike the prior was proper. (*Id.* at pp. 376-377.)

“‘[I]n ruling whether to strike or vacate a prior serious and/or violent felony conviction allegation or finding under the Three Strikes law, on its own motion, “in furtherance of justice” pursuant to . . . section 1385[, subdivision] (a), or in reviewing such a ruling, the court in question must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme’s spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.’ [Citation.]” (*People v. Carmony, supra*, 33 Cal.4th at p. 377.) “‘[W]here the record demonstrates that the trial court balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court’s ruling, even if we might have ruled differently in the first instance’ [citation].” (*Id.* at p. 378.)

Here, defendant’s record reflects he incurred 13 felony convictions between 1974 and 1989. Those convictions included offenses for assault, seven robberies, burglary, and attempted murder. Defendant additionally suffered four misdemeanor convictions between 1977 and 2015. Defendant also had grants of parole revoked on four occasions and a grant of probation revoked once. Defendant was on probation when he committed the offenses in the current case. The circumstances of the instant offenses involved

threats of serious violence and acts of violence. The court's denial of defendant's motion to strike his prior strike conviction enhancements was within its discretion.

Defendant contends the court abused its discretion because defendant's prior convictions were old and the court failed to consider the most innocuous interpretation of the evidence adduced at trial. We disagree. First, as the court noted, while defendant's most recent felony conviction occurred in 1989, he had not been finally released from prison until 2009. He had been released earlier, but had incurred two parole violations. Moreover, defendant had suffered two misdemeanor convictions since being released.

Second, the court was not required to believe defendant's interpretation of the evidence, essentially that much of the victim's recorded statements and statements to the officer should be disbelieved because she was high on heroin, could not remember the incident when she testified at trial, and there were discrepancies between her statements and the evidence found at the scene. The jury obviously believed the content of the recordings and the officer's testimony by virtue of the verdicts it rendered. The court likewise could have believed the evidence the People adduced at trial. Moreover, this was not even one of the bases argued for defendant's motion below. Furthermore, even if the court did believe such an interpretation, defendant's criminal history alone was a sufficient basis for denying the motion. The court acted within its discretion in denying defendant's motion to strike his prior strike convictions enhancements.

III. DISPOSTION

The judgment is affirmed.

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McKINSTER
Acting P. J.

We concur:

SLOUGH
J.

MENETREZ
J.